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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 24/03/17

gan **P J Davies BSc (Hons) MA MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

Dyddiad: 25.04.2017

## Appeal Decision

Site visit made on 24/03/17

by **P J Davies BSc (Hons) MA MRTPI**

**an Inspector appointed by the Welsh Ministers**

Date: 25.04.2017

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**Appeal Ref: APP/B6855/A/17/3166411**

**Site address: Land South of Fabian Way, Swansea SA1 8LD**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Commercial Development Projects Ltd against the decision of City and County of Swansea Council.
  - The application Ref 2016/3085/S73, dated 3 October 2016, was refused by notice dated 12 December 2016.
  - The application sought planning permission for erection of detached tyre and auto-care centre and two detached units (Class A3) without complying with a condition attached to planning permission Ref 2015/2223, dated 27 September 2016.
  - The condition in dispute is No 3 which states that: *'The A3 units shall not be used before 06.30 nor after 23.00hrs Monday to Saturday and Sunday 09.00 and 22.00hrs. The approved tyre centre shall not be used before 08.30 nor after 18.00hrs Monday to Friday, 08.30 to 13.00 on Saturdays and shall not be open on Sundays or Bank Holidays'*.
  - The reason given for the condition is: *'To safeguard the amenities of the occupiers of neighbouring properties'*.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of detached tyre and auto-care centre and two detached units (Class A3) at Land South of Fabian Way, Swansea SA1 8LD in accordance with application Ref 2016/3085/S73, dated 3 October 2016 without compliance with condition number 3 previously imposed on planning permission Ref 2015/2223, dated 27 September 2016 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to a new condition 3 as set out in the attached schedule.

### Main Issue

2. This is the effect that varying the disputed condition would have on the living conditions of nearby residents.

### Reasons

3. The appeal site is vacant land situated within a mixed and predominantly commercial / industrial area alongside Fabian Way, a principal route into Swansea. To the east of
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the site is a row of terraced properties, Bevans Row, which are set back and facing Fabian Way. Access to these dwellings is derived from the industrial estate road that would also serve the appeal site.

4. Although the tyre and auto-care centre would be close to Bevans Row, the planning permission includes conditions relating to the provision of an acoustic fence on the eastern boundary. There is also a condition to require a scheme of sound proofing for the building itself. Both of these conditions are re-imposed in this case. In addition, the measures required by these conditions would be further enhanced by an existing buffer of trees situated on a wide verge adjacent to the end house closest to the site. In the context of the busy traffic movements on Fabian Way and the industrial character of the area, ambient noise levels are high. The approved A3 units on the appeal site would also be open and generating traffic and associated noise during Saturday afternoons. In these circumstances, the additional impact that extending the opening hours for the tyre centre on Saturday afternoon would have on the living conditions of nearby residents would be negligible.
5. I acknowledge concerns relating to air quality, but I have no tangible evidence to demonstrate that the minor increase in opening hours would materially affect the health or wellbeing of nearby residents. I have taken account of the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.
6. I conclude that varying the disputed condition would not result in any material increase in noise or disturbance to residents, or cause harm to their living conditions. The proposal therefore complies with the objectives of Policies EV1 and EV40 of the City and County of Swansea Unitary Development Plan, which amongst other things, seek to safeguard local amenity.
7. I have deleted condition 3, and substituted for it, a new condition that permits opening until 1800 hours on Saturday. I have also imposed all the other conditions insofar as I consider them to be necessary and relevant for the reason previously given by the Council. In the event that some have been discharged, this is a matter which can be addressed by the parties.
8. For the above reasons and having regard to all other matters raised, I conclude that the appeal is allowed.

*P J Davies*

**INSPECTOR**

## Schedule of Conditions

1. The development hereby permitted shall begin not later than five years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans and documents: (SK-) 13 E - Phase 2 Elevations Sheet 1, (SK-) 15B Phase 2 Elevations Sheet 2, (SK-) 17 - Phase 2 Site Plan and Boundary, (SK-) 18 - Phase 2 Elevations Sheet 4 received 4th November 2015 and 15121-TR001 A - Amended Swept Path Analysis received 1st March 2016.
3. The use of the A3 units shall not be carried out outside the hours of 06:30 to 23:00hrs Monday to Saturday, and 09:00 and 22:00hrs on Sundays. The use of the auto tyre centre shall not be carried out outside the hours of 08:30 to 18:00hrs Monday to Friday, 08:30 to 18:00hrs on Saturdays, and not at all on Sundays or Bank Holidays.
4. The development hereby approved shall not be brought into beneficial use until the car park has been completed in accordance with the approved Connect Consultant plan 15121-TR001A. The parking spaces shall be kept available for the parking of vehicles in perpetuity.
5. Prior to the development being brought into beneficial use further details of the proposed cycle parking shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be completed in strict accordance with the said detail and retained in perpetuity.
6. No development shall take place without the prior written approval of the Local Planning Authority of a scheme for the landscaping of the site. The landscaping scheme shall be carried out within 12 months from the completion of the development. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
7. Before the development hereby approved is occupied the means of enclosing the boundaries of the site shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the eastern boundary of the site shall be finished in sound proof fencing and the front boundary along the Langdon Road access shall be kept below 1m.
8. Prior to the commencement of work on site soakaway tests shall be carried out and submitted to the Local Planning Authority. The soakaway tests shall be carried out in strict accordance with BRE Digest 365 or the equivalent CIRIA document. Development shall thereafter take place in accordance with the approved details.
9. No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage and/or details of any connections to a surface water drainage network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and

this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority.

10. A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented prior to the commencement of work on site.
11. The applicant shall submit a phased scheme, comprising three progressively more detailed reports, detailing measures to be undertaken in order to investigate the presence of land contamination, including relevant gas, vapour and, where appropriate, radiation related risks, at the proposed site.

Where the initial investigations indicate the presence of such contamination, including the presence of relevant gas/vapour and/or radioactivity, subsequent reports shall include:

- \* a list of potential receptors
- \* an assessment of the extent of the contamination
- \* an assessment of the potential risks
- \* an appraisal of remedial options, and proposal for the preferred remedial option(s).

The reports shall be submitted individually.

The provision of Phase 2 and Phase 3 reports will be required only where the contents of the previous report indicate to the Local Planning Authority that the next phase of investigation/ remediation is required.

Phase 1 report: Desk Top Study

this shall:

- \* Provide information as to site history, setting, current and proposed use.
- \* Include a conceptual site model to establish any potentially significant pollutant linkages in the source-pathway-receptor human health and environmental risk assessment.
- \* Identify if further investigation or remediation is required.

In the event that the Local Planning Authority is then of the opinion that further investigation/ information is required the applicant shall submit a detailed site investigation [Phase 2] report to the Local Planning Authority, viz:

12. Phase 2: Detailed Investigation

this shall:

- \* Provide detailed site-specific information on substances in or on the ground, geology, and surface/groundwater.

Provide for a more detailed investigation [Human Health Risk Assessment] of the site in order to confirm presence or absence of, and to quantify, those potentially significant source-pathway-receptor pollutant linkages identified in Phase 1.

Note; where any substance should be encountered that may affect any controlled waters the applicant, or representative, must contact the Natural Resources Wales in order to agree any further investigations required.

In the event that the need for remediation is identified the applicant shall submit a subsequent detailed [Phase 3] report to the Local Planning Authority, viz:

#### Phase 3: Remediation Strategy Options Appraisal

this shall:

- \* Indicate all measures to be taken to reduce the environmental and human health risks identified in Phase 1 and Phase 2 to an acceptable level, in a managed and documented manner, to best practice and current technical guidance.

#### Phase 3: Validation/verification Report

- \* On completion of remediation works a validation/verification report will be submitted to the Local Planning Authority that will demonstrate that the remediation works have been carried out satisfactorily and remediation targets have been achieved.

13. If, during the course of development, contamination not previously identified is found to be present at the site no further development [unless previously agreed in writing with the Local Planning Authority] shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a detailed strategy for dealing with said contamination. The remediation of the land shall be completed in strict accordance with the agreed detail.
14. The use hereby permitted shall not commence until a scheme of ventilation and fume extraction, including full details of the equipment to be installed for that purpose, including its location, has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed prior to its use being commenced and retained in perpetuity.
15. The use hereby permitted shall not commence until a scheme, which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products has been submitted to and approved by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied and retained in perpetuity.
16. Prior to the commencement of construction works on the application site a Construction Pollution Management Plan (CPMP) shall be submitted to and approved in writing by the Local Planning Authority. The CPMP is to include the following:
  - a) Construction programme and timetable;
  - b) Detailed plans of any piling operations to be carried out. Plans to contain vibration with regard to the neighbouring residential premises;
  - c) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc;
  - d) Proposed working hours;

- e) Principal Contractor details, which will include a nominated contact for complaints;
  - f) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
  - g) Details of on site dust mitigation measures having regard to BPM; 16 h) Details of on site noise mitigation measures having regard to BPM;
  - h) Details of waste management arrangements (including any proposed crushing/screening operations); and
  - i) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on Local Authority.
17. Notwithstanding the submitted details a scheme of sound proofing for the proposed auto tyre centre building shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter take place in accordance with the approved details and the sound proofing measures shall be provided prior to first beneficial use of the auto tyre centre and retained thereafter to serve the development.